

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARIA G. ESPIRITU,
vs.
SHERIFF GILLESPIE, et al.,
Plaintiff,
Defendant.

Case No. 2:13-cv-02243-APG-GWF

FINDINGS AND RECOMMENDATION

This matter comes before the Court on Plaintiff Maria G. Espiritu's ("Plaintiff") failure to file an Amended Application to Proceed *in Forma Pauperis* or in the alternative to pay the filing fee pursuant to Order (#4).

This matter commenced on December 9, 2013, with the filing of Plaintiff Espiritu's complaint and motion/application to proceed *in forma pauperis* (#1). Plaintiff's motion to proceed *in forma pauperis* was initially denied without prejudice on May 27, 2014 and subsequently denied without prejudice on July 1, 2014 because her income exceeded her expenses. Plaintiff was ordered to file an amended application to proceed *in forma pauperis* or to pay the filing fee within thirty (30) days of the order dated July 1, 2014. Plaintiff was cautioned that failing to do so may result in the dismissal of his action.

Pursuant to Fed. R. Civ. P. 41(b), the Court may dismiss an action with prejudice if the Plaintiff fails to prosecute or to comply with these rules or a court order. Pursuant to Order #4, Plaintiff had until July 31, 2014 to file an amended application to proceed *in forma pauperis* or to pay the filing fee. Notice was mailed to Plaintiff on July 1, 2014. More than thirty days have elapsed since the order was mailed and Plaintiff has not filed an amended application or paid the

1 filing fee pursuant to the Court's Order (#4). The Complaint therefore has neither been screened
2 nor filed with the Court. Accordingly,

3 **RECOMMENDATION**

4 **IT IS HEREBY RECOMMENDED** that Plaintiff's case be **closed**.

5 **NOTICE**

6 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
7 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
8 held that the courts of appeal may determine that an appeal has been waived due to the failure to
9 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
10 has also held that (1) failure to file objections within the specified time and (2) failure to properly
11 address and brief the objectionable issues waives the right to appeal the District Court's order
12 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
13 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

14 DATED this 13th day of August, 2014.

15
16 
17 GEORGE FOLEY, JR.
18 United States Magistrate Judge
19
20
21
22
23
24
25
26
27
28